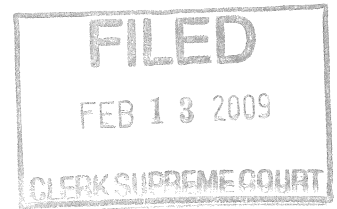


IN THE SUPREME COURT OF IOWA



O R D E R

**IN THE MATTER OF THE PUBLIC COMMENTS
FOR IOWA RULES OF CRIMINAL PROCEDURE
2.4(6) AND 2.5(3)**

On December 23, 2008, the court issued an order amending Iowa Rules of Criminal Procedure 2.4(6) and 2.5(3) concerning certain information about a witness that must be provided in the minutes of evidence. After the order amending Iowa Rules of Criminal Procedure 2.4(6) and 2.5(3), the court received public comments questioning whether the rule as amended comports with the due process requirements of the United States and Iowa Constitutions. *See Smith v. State of Illinois*, 390 U.S. 129, 88 S. Ct. 748, 19 L. Ed. 2d 956 (1968). The court also received comments questioning whether the rule imposes an undue burden on a defendant's access to witnesses for preparing a defense and the service of subpoenas. The court is now considering whether to amend Iowa Rules of Criminal Procedure 2.4(6) and 2.5(3), as follows:

Rule 2.4. Indictments

2.4(6) Minutes.

a. Contents. A minute of evidence shall consist of a notice in writing stating the name, ~~place of residence,~~ residential address and occupation of the witness upon whose testimony the indictment is found, and a full and fair statement of the witness' testimony before the grand jury and a full and fair statement of additional expected testimony at trial. However, in the case of law enforcement or expert witnesses, information regarding the residential addresses shall be sealed and made available to defendant's attorney and investigatory staff only. This information shall not be disclosed to any other individuals without order of this court.

b. Copy to defense. Such minutes of evidence shall not be open for the inspection of any person except the judge of the court, the prosecuting attorney, or the defendant and the defendant's counsel. The clerk of the court must, on demand made, furnish the defendant or his or her counsel a copy thereof without charge.

c. Minutes used again. A grand jury may consider minutes of testimony previously heard by the same or another grand jury. In any case, a grand jury may take additional testimony.

* * *

2.5(3) *Witness names and minutes.* The prosecuting attorney shall, at the time of filing such information, also file the minutes of evidence of the witnesses which shall consist of a notice in writing stating the name, ~~place of residence~~ residential address and occupation of each witness upon whose expected testimony the information is based, and a full and fair statement of the witness' expected testimony. In the case of law enforcement or expert witness, information regarding place of residential address is governed by the confidentiality provisions of Iowa Rule of Criminal Procedure 2.4(6) and may not be modified without court order.

The court appreciates the input of everyone who submitted comments and provided the court with their insights on these important matters.

The court concludes that oral presentations concerning the amendments to Iowa Rules of Criminal Procedure 2.4(6) and 2.5(3) will further assist the court in its deliberations. Therefore, the court will hold a hearing on this matter at **10:00 a.m. on March 5, 2009**, in the supreme court courtroom. All persons who previously filed written comments with the clerk of the supreme court concerning rules of criminal procedure 2.4(6) and 2.5(3) are invited to request time for an oral presentation. Those requesting time to speak should be prepared to address the merits of the proposed changes to the rules contained in this order, including other viable alternatives to allow a defendant access to witnesses.

Request for oral presentation should be emailed to rules.comment@iowacourts.gov and must state the words “**Criminal Rules**” in the subject line of the email. Requests for oral presentations may also be mailed to Clerk of the Supreme Court, 1111 East Court Avenue, Des Moines, Iowa 50319. Requests for oral presentations shall not include any additional information or comments to the rule or copies of comments previously filed with the clerk. Requests for oral presentations must be received by **February 23, 2009**, to be considered. After the deadline for requests to present orally, the court will determine who shall be allowed to present orally and issue a schedule for the presentations.

Dated this 13th day of February, 2009.

THE SUPREME COURT OF IOWA

By



Marsha K. Ternus, Chief Justice